

- (ii) participation as an investor.
- (A) In general.
- (B) Work done in individual's capacity as an investor.
- (3) Participation of spouses.
- (4) Methods of proof.
- (g) Material participation of trust and estates. [Reserved]
- (h) Miscellaneous rules.
- (1) Participation of corporations.
- (2) Treatment of certain retired farmers and surviving spouses of retired or disabled farmers.
- (3) Coordination with rules governing the treatment of passthroughs entities. [Reserved]
- (i) [Reserved]
- (j) Material participation for preceding taxable years. [Reserved]
- (1) In general. [Reserved]
- (2) Material participation for taxable years beginning before January 1, 1987. [Reserved]
- (k) Examples.

*§ 1.469-6 Treatment of losses upon certain dispositions.* [Reserved]

*§ 1.469-7 Treatment of self-charged items of income and expense.* [Reserved]

*§ 1.469-8 Application of section 469 to trust, estates, and their beneficiaries.* [Reserved]

*§ 1.469-9 Rules for certain rental real estate activities.*

- (a) Scope and purpose.
- (b) Definitions.
- (1) Trade or business.
- (2) Real property trade or business.
- (3) Rental real estate.
- (4) Personal services.
- (5) Material participation.
- (6) Qualifying taxpayer.
- (c) Requirements for qualifying taxpayers.
- (1) In general.
- (2) Closely held C corporations.
- (3) Requirement of material participation in the real property trades or businesses.
- (4) Treatment of spouses.
- (5) Employees in real property trades or businesses.
- (d) General rule for determining real property trades or businesses.
- (1) Facts and circumstances.
- (2) Consistency requirement.
- (e) Treatment of rental real estate activities of a qualifying taxpayer.
- (1) In general.
- (2) Treatment as a former passive activity.
- (3) Grouping rental real estate activities with other activities.
- (i) In general.
- (ii) Special rule for certain management activities.
- (4) Example.
- (f) Limited partnership interests in rental real estate activities.

- (1) In general.
- (2) De minimis exception.
- (g) Election to treat all interests in rental real estate as a single rental real estate activity.
- (1) In general.
- (2) Certain changes not material.
- (3) Filing a statement to make or revoke the election.
- (h) Interests in rental real estate held by certain passthrough entities.
- (1) General rule.
- (2) Special rule if a qualifying taxpayer holds a fifty-percent or greater interest in a passthrough entity.
- (3) Special rule for interests held in tiered passthrough entities.
- (i) [Reserved]
- (j) \$25,000 offset for rental real estate activities of qualifying taxpayers.
- (1) In general.
- (2) Example.

*§ 1.469-10 Application of section 469 to publicly traded partnerships.* [Reserved]

*§ 1.469-11 Effective date and transition rules.*

- (a) Generally applicable effective dates.
- (b) Additional effective dates.
- (1) Application of 1992 amendments for taxable years beginning before October 4, 1994.
- (2) Additional transition rule for 1992 amendments.
- (3) Fresh starts under consistency rules.
- (i) Regrouping when tax liability is first determined under Project PS-1-89.
- (ii) Regrouping when tax liability is first determined under § 1.469-4.
- (iii) Regrouping when taxpayer is first subject to section 469(c)(7).
- (4) Certain investment credit property.
- (c) Special rules.
- (1) Applicability of certain income re-characterization rules.
- (i) in general.
- (ii) Property rented to a nonpassive activity.
- (2) Qualified low-income housing projects.
- (3) Effect of events occurring in years prior to 1987.
- (d) Examples.

[T.D. 8417, 57 FR 20748, May 15, 1992, as amended by T.D. 8477, 58 FR 11538, Feb. 26, 1993; T.D. 8495, 58 FR 58787, Nov. 4, 1993; T.D. 8565, 59 FR 50487, Oct. 4, 1994; T.D. 8597, 60 FR 36684, July 18, 1995; T.D. 8645, 60 FR 66498, Dec. 22, 1995]

#### **§ 1.469-1 General rules.**

- (a)-(c)(7) [Reserved]
- (c)(8) *Consolidated groups.* Rules relating to the application of section 469 to consolidated groups are contained in paragraph (h) of this section.
- (c)(9)-(d)(1) [Reserved]

(d)(2) *Coordination with sections 613A(d) and 1211.* A passive activity deduction that is not disallowed for the taxable year under section 469 and the regulations thereunder may nonetheless be disallowed for the taxable year under section 613A(d) or 1211. The following example illustrates the application of this paragraph (d)(2):

*Example.* In 1993, an individual derives \$10,000 of ordinary income from passive activity X, no gains from the sale or exchange of capital assets or assets used in a trade or business, \$12,000 of capital loss from passive activity Y, and no income, gain, deductions, or losses from any other passive activity. The capital loss from activity Y is a passive activity deduction (within the meaning of § 1.469-2T(d)). Under section 469 and the regulations thereunder, the taxpayer is allowed \$10,000 of the \$12,000 passive activity deduction and has a \$2,000 passive activity loss for the taxable year. Since the \$10,000 passive activity deduction allowed under section 469 is a capital loss, such deduction is allowable for the taxable year only to the extent provided under section 1211. Therefore, the taxpayer is allowed \$3,000 of the \$10,000 capital loss under section 1211 and has a \$7,000 capital loss carryover (within the meaning of section 1212(b)) to the succeeding taxable year.

(d)(3)-(e)(1) [Reserved]

(e)(2) *Trade or business activities.* Trade or business activities are activities that constitute trade or business activities within the meaning of § 1.469-4(b)(1).

(e)(3)(i)-(e)(3)(ii) [Reserved]

(e)(3)(iii) *Average period of customer use.*—(A) *In general.* For purposes of this paragraph (e)(3), the average period of customer use for property held in connection with an activity (the *activity's average period of customer use*) is the sum of the average use factors for each class of property held in connection with the activity.

(B) *Average use factor.* The average use factor for a class of property held in connection with an activity is the average period of customer use for that class of property multiplied by the fraction obtained by dividing—

(1) The activity's gross rental income attributable to that class of property; by

(2) The activity's gross rental income.

(C) *Average period of customer use for class of property.* In determining an activity's average period of customer use for a taxable year, the average period

of customer use for a class of property held in connection with an activity is determined by dividing—

(1) The aggregate number of days in all periods of customer use for property in the class (taking into account only periods that end during the taxable year or that include the last day of the taxable year); by

(2) The number of those periods of customer use.

(D) *Period of customer use.* Each period during which a customer has a continuous or recurring right to use an item of property held in connection with the activity (without regard to whether the customer uses the property for the entire period or whether the right to use the property is pursuant to a single agreement or to renewals thereof) is treated for purposes of this paragraph (e)(3)(iii) as a separate period of customer use. The duration of a period of customer use that includes the last day of a taxable year may be determined on the basis of reasonable estimates.

(E) *Class of property.* Taxpayers may organize property into classes for purposes of this paragraph (e)(3)(iii) using any method under which items of property for which the amount of the daily rent differs significantly are not included in the same class.

(F) *Gross rental income and daily rent.* In determining an activity's average period of customer use for a taxable year—

(1) The activity's gross rental income is the gross income from the activity for the taxable year taking into account only income that is attributable to amounts paid for the use of property;

(2) The activity's gross rental income attributable to a class of property is the gross income from the activity for the taxable year taking into account only income that is attributable to amounts paid for the use of property in that class; and

(3) The daily rent for items of property may be determined on any basis that reasonably reflects differences during the taxable year in the amounts ordinarily paid for one day's use of those items of property.

(e)(3)(iv)-(e)(3)(vi)(C) [Reserved]